

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS

DO NOT WRITE IN THIS SPACE

Case
29-CB-111739Date Filed
8/20/13

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name Sheet Metal Workers International, Local 28	b. Union Representative to contact Kevin Connors
c. Address (Street, city, state, and ZIP code) 195 Mineola Blvd, Mineola, New York	d. Tel. No. 516-742-9478 e. Cell No. 917-863-8036 f. Fax No. 516-742-6360 g. e-Mail

h. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) 8(b)(1)(A) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

During the past 6 months, the above named Labor Organization has failed and refused to remit to employees their accrued Vacation Fund and has failed and refused to respond to employees requests for these funds, in violation of 8(b)(1)(A) of the Act.

3. Name of Employer All Around Spiral	4a. Tel. No. 631-588-0220 c. Fax No. 631-588-3365	b. Cell No. d. e-Mail
5. Location of plant involved (street, city, state and ZIP code) 10 Fleetwood Ct, Ronkonkomo, NY	6. Employer representative to contact Rich Kern	
7. Type of establishment (factory, mine, wholesaler, etc.) Manufacturing	8. Identify principal product or service air duct manufacturing	9. Number of workers employed 4
10. Full name of party filing charge (b) (6), (b) (7)(C)	11a. Tel. No. (b) (6), (b) (7)(C) c. Fax No.	b. Cell No. d. e-Mail
11. Address of party filing charge (street, city, state and ZIP code.) (b) (6), (b) (7)(C)		

12. DECLARATION

(b) (6), (b) (7)(C) are true to the best of my knowledge and belief
an individual (b) (6), (b) (7)(C)
Print/Type name and title or office, if any)

Tel. No. (b) (6), (b) (7)(C)
Cell No.
Fax No.
e-Mail (b) (6), (b) (7)(C)

same as above

Address

(date) 8/15/2013

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 29
TWO METRO TECH CENTER STE 5100
FL 5
BROOKLYN, NY 11201-3838

Agency Website: www.nlrb.gov
Telephone: (718)330-7713
Fax: (718)330-7579

August 22, 2013

KEVIN CONNORS
SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, LOCAL 28
195 Mineola Blvd
Mineola, NY 11501-2524

Re: Sheet Metal Workers International Union,
Local 28 (All Around Spiral)
Case 29-CB-111739

Dear CONNORS:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney KIMBERLY WALTERS whose telephone number is (718)330-2844.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be

August 22, 2013

considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



JAMES PAULSEN
Regional Director

Enclosure: Copy of Charge

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION LOCAL UNION 28**

Charged Party

and

(b) (6), (b) (7)(C)

Charging Party

Case 29-CB-111739

AFFIDAVIT OF SERVICE OF CHARGE AGAINST LABOR ORGANIZATION

I, the undersigned employee of the National Labor Relations Board, state under oath that on August 22, 2013, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

KEVIN CONNORS
SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION,
LOCAL 28
195 Mineola Blvd
Mineola, NY 11501-2524

August 22, 2013

Date

Designated Agent of NLRB

Name

Tasha V. Fred

Signature



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 29
TWO METRO TECH CENTER STE 5100
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Fax: (718)330-7579

August 22, 2013

(b) (6), (b) (7)(C)

Re: Sheet Metal Workers International Union,
Local 28 (All Around Spiral)
Case 29-CB-111739

Dear (b) (6), (b) (7)(C)

The charge that you filed in this case on August 20, 2013 has been docketed as case number 29-CB-111739. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney KIMBERLY WALTERS whose telephone number is (718)330-2844. If the Board agent is not available,

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing)

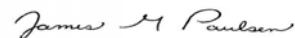
August 22, 2013

through our website www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlr.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in cursive script that reads "James M. Paulsen".

JAMES PAULSEN
Regional Director



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NATIONAL LABOR RELATIONS BOARD

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TWO METRO TECH CENTER STE 5100
FL 5
BROOKLYN, NY 11201-3838

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Fax: (718)330-7579

August 22, 2013

RICHARD KERN, President
COOL SHEET METAL
10 Fleetwood Ct
Ronkonkoma, NY 11779-6907

Re: Sheet Metal Workers International Union,
Local 28 (All Around Spiral)
Case 29-CB-111739

Dear Mr. KERN:

Enclosed is a copy of a charge that has been filed in this case. Although this charge is not filed against you, it is necessary for us to obtain information from you to determine whether we have jurisdiction over this case. In the future we may also need to obtain evidence from you concerning the merits of the charge. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney KIMBERLY WALTERS whose telephone number is (718)330-2844. If this Board agent is not available,

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

August 22, 2013

If, during the investigation of this matter, the Board agent asks for evidence, I strongly urge you or your representative to promptly present all evidence relevant to the investigation. In this way, the case may be fully investigated more quickly.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at a hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. On all your correspondence regarding the charge, please include the case name and number indicated above.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures*, offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



JAMES PAULSEN
Regional Director

Enclosures

1. Copy of Charge
2. Commerce Questionnaire

Revised 3/21/2011

NATIONAL LABOR RELATIONS BOARD

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

Sheet Metal Workers International Union, Local 28 (All Around Spiral)

CASE NUMBER

29-CB-111739

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)**2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS**5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates)**YES NO**A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.
\$C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.
\$F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$H. **Gross Revenues** from all sales or performance of services (Check the largest amount)
☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. **Did you begin operations within the last 12 months?** If yes, specify date: _____**10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

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Roy Barnes
Riccardo Iaccarino
Wendell V. Shepherd

Barnes, Iaccarino & Shepherd LLP
ATTORNEYS AT LAW

Danielle M. Carney
Zachary Eagle
Michele Harari
Dana Henke
Steven Kern
Samer E. Khalaf*
Lauren M. Kugielska**
Giacchino Russo

258 Saw Mill River Road
Elmsford, New York 10523
(914) 592-1515
Fax: (914) 592-3213

3 Surrey Lane
Hempstead, New York 11550
Tel: (516) 483-9990
Fax: (516) 483-0566

20 Court Street
4th Floor
Hackensack, NJ 07601
(201) 678-1119
Fax: (201) 678-9444

* Only Admitted in NJ, MD & DC
** Also Admitted in NJ

August 28, 2013

BY FAX 212-264-2450

Karen Fernbach, Regional Director
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, NY 10278

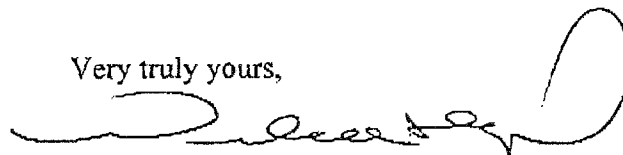
Re: Local 28, SMWIA – All Around Spiral
Case No.: 29-CB-111739

Dear Ms. Fernbach:

This firm represents Local 28, SMWIA.

Please direct all future correspondence in the above matter to my attention.

Very truly yours,



Wendell Shepherd

cc: Local 28, SMWIA



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 29
TWO METRO TECH CENTER STE 5100
FL 5
BROOKLYN, NY 11201-3838

Agency Website: www.nlrb.gov
Telephone: (718)330-7713
Fax: (718)330-7579

October 24, 2013

WENDELL SHEPHERD, ESQ.
BARNES IACCARINO & SHEPHERD LLP
258 Saw Mill River Rd Ste 3
Elmsford, NY 10523-1956

Re: Sheet Metal Workers International Union,
Local 28 (All Around Spiral)
Case 29-CB-111739

Dear SHEPHERD:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

/S/

JAMES G. PAULSEN
Regional Director

cc: KEVIN CONNORS
SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION,
LOCAL 28
195 Mineola Blvd
Mineola, NY 11501-2524

(b) (6), (b) (7)(C)

RICHARD KERN, President
COOL SHEET METAL
10 Fleetwood Ct
Ronkonkoma, NY 11779-6907